

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31990
Docket No. SG-32636
97-3-95-3-566**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of R. C. Davis and G. T. Nelson for payment of 10 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized outside forces to install meter bases for crossing signals at Mile Post 693.5 on April 14 and 15, 1994, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. SIG 94-53. General Chairman's File No. SWGC-940. BRS File Case No. 9678-SP."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On the dates set forth in the claim, the Carrier used outside forces to install meter bases for crossing signals. The Carrier defended on the ground that in recent years it has been standard practice to contract the installation of the meter drop for commercial

power feeds and the Organization has not objected to that practice until the instant dispute. The Carrier further asserted that there have been numerous installations done by contracts that can be documented since 1991 (more than 20) and 1992 without objection by the Organization. Those assertions are not refuted. Further, according to the Carrier, at no point in the processing of the claim did the Organization assert that its members ever performed this work. Examination of the record substantiates that position as well.

The Organization's Scope Rule does not specifically cover the particular work in dispute. For the sake of discussion, and giving the Organization the benefit of the doubt, we can assume that the Rule is ambiguous with respect to this specific work. Past practice resolves ambiguous language. Here, a firm past practice of non-covered individuals performing this work has been demonstrated. That past practice and the fact that the Organization never showed that its members ever performed the work are sufficient reasons to conclude that the work is not scope covered and that the Carrier did not violate the Agreement by assigning the work to outside forces.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.